



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

MAR 20 2009

Jennifer L. Blum, Esq.  
Drinker Biddle & Reath, LLP  
1500 K Street, N.W.  
Suite 1100  
Washington, D.C. 20005-1209

RE: MUR 6121  
Advanced Medical Technology Association  
AdvaMed PAC  
Kenneth Mendez, in his official capacity  
as treasurer


Dear Ms. Blum:

On March 12, 2009, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your clients' behalf in settlement of violations of 2 U.S.C. §§ 432(b)(2)(B), 432(h)(1), 434(b), 441b(a) and 441b(b)(4)(D), provisions of the Federal Election Campaign Act of 1971, as amended; and 11 C.F.R. §§ 114.8(c) and (d), 102.8(b)(2), 103.3(a), and 110.2(b)(3) of the Commission's regulations. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

  
Kamau Philbert  
Attorney

Enclosure  
Conciliation Agreement

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**BEFORE THE FEDERAL ELECTION COMMISSION: 01**

In the Matter of )  
 ) MUR 6121  
Advanced Medical Technology Association )  
Advanced Medical Technology Association PAC )  
and Kenneth Mendez, in his official capacity )  
as AdvaMed PAC treasurer )

**CONCILIATION AGREEMENT**

This matter was initiated by a *sua sponte* submission filed with the Federal Election Commission ("the Commission") by Advanced Medical Technology Association, on behalf of its separate segregated fund, Advanced Medical Technology Association PAC and Kenneth Mendez, in his official capacity as AdvaMed PAC treasurer, pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. §§ 437g(a)(1) and (2).

In the submission, Advanced Medical Technology Association, Advanced Medical Technology Association PAC and Kenneth Mendez, in his official capacity as PAC treasurer (collectively "Respondents") disclosed improperly solicited contributions, corporate expenditures and other forms of corporate facilitation, and various reporting errors during the 2006 election cycle. Based on the facts self-disclosed by Respondents and other available information, the Commission found reason to believe that Advanced Medical Technology Association PAC and Kenneth Mendez, in his official capacity as treasurer, violated 2 U.S.C. §§ 432(b)(2)(B), 432(h)(1), 434(b), 441b(a), and 441b(b)(4)(D); and 11 C.F.R. §§ 114.8(c) and (d), 102.8(b)(2), 103.3(a), and 110.2(b)(3), and that Advanced Medical Technology Association violated 2 U.S.C. §§ 441b(a) and 441b(b)(4)(D), and 11 C.F.R. § 114.8(c) and (d).

1           NOW, THEREFORE, the Commission and the Respondents, having participated in  
2 informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree  
3 as follows:

4           I. The Commission has jurisdiction over Respondents and the subject matter of this  
5 proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.  
6 § 437g(a)(4)(A)(i).

7           II. Respondents have had a reasonable opportunity to demonstrate that no action should  
8 be taken in this matter.

9           III. Respondents enter voluntarily into this agreement with the Commission.

10          IV. The pertinent facts in this matter are as follows:

11           1. Advanced Medical Technology Association ("AdvaMed") is an incorporated  
12 nonprofit trade association of manufacturers of medical devices, diagnostic products, and health  
13 information systems.

14           2. Advanced Medical Technology Association PAC ("AdvaMed PAC") is  
15 AdvaMed's separate segregated fund and a multicandidate political committee registered with  
16 the Commission. AdvaMed PAC is a political committee within the meaning of 2 U.S.C.  
17 § 431(4).

18           3. Kenneth Mendez is the current treasurer of AdvaMed PAC. Mr. Mendez was not  
19 the treasurer at the time of the activity described herein.

**Improper Solicitations**

4. The Federal Election Campaign Act of 1971, as amended, ("the Act") prohibits a corporation from making a contribution or expenditure in connection with a federal election. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(a). However, the Act permits a corporation to establish, administer, and solicit contributions to, a separate segregate fund to be utilized for political purposes. *See* 2 U.S.C. § 441b(b)(2)(C).

5. The Act limits a trade association's solicitations to the restricted class, namely stockholders and executive or administrative personnel (and the family members) of the trade association or the trade association's members. 2 U.S.C. § 441b(b)(4)(D); 11 C.F.R. § 114.8(c); *see* 11 C.F.R. § 114.1(j). The Commission's regulations prohibit a trade association from soliciting the separate segregated funds of its member organizations. *See* 11 C.F.R. § 114.7(j). During the 2006 election cycle, the PAC solicited and received 34 contributions totaling \$62,600 from sources outside the restricted class consisting of \$58,900 from thirteen separate segregate funds of its members during the election cycle and \$3,700 from 11 individuals. The PAC further solicited and received contributions totaling \$750 from employees of nonmember companies through a raffle of football tickets provided to it by AdvaMed.

6. The Act permits a trade association with corporate members or the association's separate segregated fund to solicit federal contributions from the restricted class of its members only if the solicitation has been separately, knowingly, and specifically pre-approved by the respective member. 2 U.S.C. § 441b(b)(4)(D); 11 C.F.R. §§ 114.8(c) and (d). The Commission's regulations require a trade association to keep a copy of each pre-approval of a

solicitation for three years from the year for which the approval applies. 11 C.F.R. § 114.8(d)(2). During the 2006 election cycle, the PAC solicited and received 56 contributions totaling \$79,350 from the restricted class of AdvaMed's members without having records of approvals by the members.

### Reporting Errors

7. The Act requires a political committee to disclose to the Commission all of its receipts, and to do so accurately and completely. *See* 2 U.S.C. §§ 434(b)(2)(A) and (D), and 434(b)(3)(A) and (B); 11 C.F.R. § 104.3(a). The PAC failed to disclose 11 contributions from individuals totaling \$5,800; misreported 9 contributions totaling \$8,750 by disclosing inaccurate dates of receipt; misreported a \$1,000 contribution as a \$2,000 contribution, and misreported as a contribution a \$150 check from an authorized committee that was intended for a vendor as payment for fundraising services.

8. The Act requires a political committee to disclose all of its disbursements or expenses it incurs on behalf of federal candidates, and to do so accurately and completely. *See* 2 U.S.C. §§ 434(b)(4)(H)(i) and (v), and 434(b)(6)(B)(i) and (v); 11 C.F.R. § 104.13(a)(2). The PAC failed to disclose two contributions totaling \$3,500 that it made to federal candidates or PACs; failed to file Pre-Primary reports for two disclosed contributions totaling \$3,000; misreported a \$2,000 contribution it made to an authorized committee as a \$3,000 contribution; failed to disclose or misreported a total of \$15,240 in fundraising expenses from several fundraisers (including the raffle) the PAC hosted for federal candidates; failed to disclose to the

Commission \$2,180 in monthly service fees the PAC paid to a vendor for processing the online contributions; and failed to disclose \$33 in disbursements for bank fees.

9. In addition to complete and accurate disclosure of receipts and disbursements, the Act requires accurate disclosure of the amount of cash on hand at the beginning and end of the reporting period. *See* 2 U.S.C. § 434(b)(1); 11 C.F.R. § 104.3(a)(1). The PAC understated its 2004 year end cash balance by \$425 (it should have reported \$13,462.87 instead of \$13,037.87); understated its 2005 year end cash balance and 2006 beginning cash balance by \$3,741.86 (it should have been reported as \$18,530.37 instead of \$14,788.51); and overstated its 2006 year end cash balance by \$3,615.35 (it should have been \$22,197.27 instead of \$25,812.62).

10. The Commission's regulations provide that a multicandidate committee contribution that is not specifically designated (in writing) to a particular election will be applied to the next scheduled election. *See* 11 C.F.R. § 110.2(b)(2)(ii). In its disclosure reports, the PAC improperly designated to general elections 13 contributions totaling \$19,500 that were made prior to primary elections, without informing the recipient committees of the designations.

#### **Failure to Timely Forward and Deposit Contributions**

11. The Act requires every person who receives a contribution in excess of \$50 for an unauthorized political committee to forward the contribution to the committee no later than 10 days after receiving the contribution. 2 U.S.C. § 432(b)(2)(B); 11 C.F.R. § 102.8(b)(2). The transmittal requirement applies to a collecting agent. *See* 11 C.F.R. § 102.6(b). The PAC is responsible for ensuring that the transmittal requirement is met for its collecting agent. 11 C.F.R.

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1    § 102.6(c)(1). The Act also requires a political committee to deposit all receipts into a checking  
2    account. *See* 2 U.S.C. § 432(h)(1). The Commission's regulations require that such deposit be  
3    made within ten days of receipt of the contribution. 11 C.F.R. § 103.3(a). During the election  
4    cycle the PAC received 18 online contributions totaling \$13,500 that were either untimely  
5    forwarded to the PAC or otherwise deposited into the PAC's bank account after the expiration of  
6    the ten-day deposit period. The contributions were forwarded up to 32 days after the  
7    contributions were actually made and were deposited up to three months after receipt. The PAC  
8    also failed to deposit two contributions totaling \$200.

#### 9                                    **Corporate Expenditures**

10                    12. The Act provides that a corporation may not make "a contribution or an  
11    expenditure in connection with any election for federal office." 2 U.S.C. § 441b(a). As used in  
12    Section 441b, the term "contribution" includes any direct or indirect payment, distribution, loan,  
13    advance, deposit or gift of money, or any services, or anything of value to any candidate,  
14    campaign committee, or political party or organization, in connection with a Federal election.  
15    2 U.S.C. § 441b(b)(2). A corporation is prohibited from facilitating the making of contributions  
16    to candidates or political committees, other than to the separate segregated fund of the  
17    corporation. *See* 11 C.F.R. § 114.2(f)(1). Using corporate funds or facilities in connection with  
18    a federal election is a violation of the Act, unless otherwise exempted or the costs of the facilities  
19    are paid for in advance or are properly reimbursed. *See* 2 U.S.C. § 441(b)(a); 11 C.F.R.  
20    §§ 114.2(f) and 114.9. Facilitation means using corporate or labor organization resources or  
21    facilities to engage in fundraising activities in connection with any federal election, and includes

1 providing catering or other food services operated or obtained by the corporation, unless the  
2 corporation receives advance payment for the fair market value of the services. *See* 11 C.F.R.  
3 § 114.2(f)(2). Facilitation also includes, but is not limited to officials or employees of the  
4 corporation or labor organization ordering or directing subordinates or support staff to plan,  
5 organize, or carry out the fundraising project as a part of their work responsibilities using  
6 corporate resources, unless the corporation receives advance payment for the fair market value of  
7 such services. *Id.*

8 13. AdvaMed paid for or advanced a total of \$17,930 for fundraising expenses for  
9 food, beverage, room rental, and photography services related to twelve fundraisers AdvaMed  
10 PAC hosted or sponsored on behalf of federal candidates. A total of \$12,524.86 from seven  
11 fundraisers was not reimbursed by the PAC. The remaining total of \$5,772.74 was reimbursed  
12 by the PAC approximately 13 to 119 days after the respective fundraisers.

13 14. The Commission's regulations permit a membership organization to use general  
14 treasury funds to solicit contributions to its separate segregate fund, provided that the treasury  
15 funds are not used as a replacement of voluntary contributions. *See* 11 C.F.R. § 114.5(b). Use of  
16 treasury funds to pay for a fundraising raffle is not a prohibited trade of treasury funds for  
17 voluntary contributions to the separate segregate fund if the treasury funds do not exceed one  
18 third of the contributions raised. *See* 11 C.F.R. § 114.5(b)(2) and Advisory Opinion 2006-33  
19 at 3.

20 15. AdvaMed and the PAC conducted a fundraising raffle of four Washington  
21 Redskins football tickets on behalf of the PAC, and the PAC did not reimburse AdvaMed for the



related fundraising costs. The four raffle tickets were valued at \$2,116.08, and the PAC received contributions totaling \$1,850 from the raffle. As the cost of the football tickets were more than one third of the total amount raised, the PAC should have reimbursed AdvaMed approximately \$1,500 ( $\$2,116.08 - \$616.67 (\$1,850 \div 3 = \$616.67)$ ). See 11 C.F.R. § 114.5(b)(2). Therefore, the PAC received an additional \$1,500 in-kind corporate contribution from AdvaMed due to its failure to properly reimburse the cost of the tickets that were more than one-third of the contributions received.

#### **Corrective Action and Self-Disclosure**

16. Respondents contend that upon receipt of FEC compliance notices and shortly after he became treasurer of the PAC, Kenneth Mendez sought a comprehensive review of AdvaMed PAC's activities and promptly took necessary corrective actions, including initiating audits of the PAC's operations, retaining legal counsel to ensure future compliance, and promptly filing a *sua sponte* submission with the Commission.

17. Based on the findings of their internal review, Respondents have taken a variety of remedial measures to correct the irregularities and to prevent future violations, in addition to self-reporting the irregularities to the Commission. Respondents represent that AdvaMed promptly retained outside counsel to assist with a comprehensive internal compliance audit of the PAC's activities and reconciliation of the PAC's bank account with the PAC's disclosure reports to resolve accounting discrepancies. It hired an independent audit firm to verify the processes and results of the internal audit. AdvaMed increased its monitoring of the PAC's daily activities, placed the then-PAC Administrator on probation, and eventually terminated him. AdvaMed also

1 hired a more experienced PAC Administrator. AdvaMed has further restructured the PAC's  
2 financial accounting system in line with the Commission's recommended best practices for  
3 internal controls and has revised how it processes online contributions. Finally, AdvaMed now  
4 relies on outside counsel to review its current activities.

5 18. In determining the appropriate civil penalty in this matter, the Commission  
6 considered a number of factors, including the above-described measures initiated by Respondents  
7 and Respondents full cooperation with the Commission throughout the course of its  
8 investigation. Significantly, Respondents informed the Commission of potential violations  
9 before the violation had been or was about to be discovered by any outside party, including the  
10 Commission; promptly ceased the violative activities; and initiated a comprehensive internal  
11 audit that included hiring outside counsel and an independent audit firm.

12 V. 1. AdvaMed and AdvaMed PAC improperly solicited and received a total of  
13 \$62,600 from sources outside its restricted class, including \$58,900 from 13 PACs of the  
14 member organizations of AdvaMed and \$3,700 from individuals from individuals who were not  
15 stockholders and executive or administrative personnel (and the family members) of the trade  
16 association or the trade association's members, in violation of 2 U.S.C. § 441b(b)(4)(D) and  
17 11 C.F.R. § 114.8(c). AdvaMed and AdvaMed PAC improperly solicited and received a total of  
18 \$79,350 from individuals for whom there was no record of separate and specific pre-approval to  
19 be solicited, in violation of 2 U.S.C. § 441b(b)(4)(D) and 11 C.F.R. §§ 114.8(c) and (d).

20 2. AdvaMed PAC failed to accurately and completely disclose receipts,  
21 disbursements, and cash on hand balances, in violation of 2 U.S.C. § 434(b).

3. AdvaMed PAC improperly designated to general elections contributions that were made prior to primary election, in violation of 11 C.F.R. § 110.2(b)(3).

4. AdvaMed PAC failed to have contributions timely forwarded, in violation of 2 U.S.C. §§ 432(b)(2)(B) and 11 C.F.R. § 102.8(b)(2). It also failed to timely deposit contributions, in violation of 2 U.S.C. § 432(h)(1) and 11 C.F.R. § 103.3(a).

5. AdvaMed paid for or advanced funds for fundraising expenses from fundraisers AdvaMed PAC hosted or sponsored on behalf of federal candidates. AdvaMed PAC failed to reimburse, or to reimburse timely, corporate advances by AdvaMed, in violation of 2 U.S.C. § 441b(a).

VI. 1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Nineteen Thousand dollars (\$19,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondents will cease and desist from violating 2 U.S.C. §§ 432(b)(2)(B), 432(h)(1), 434(b), 441b(a), and 441b(b)(4)(D); and 11 C.F.R. §§ 114.8(c) and (d), 102.8(b)(2), 103.3(a), and 110.2(b)(3).

3. AdvaMed PAC will file amended disclosure reports and reimburse AdvaMed \$14,025 for the unreimbursed fundraising expenses, including the raffle.

4. AdvaMed PAC will refund or disgorge \$62,600 in contributions that it raised outside the restricted class or provide evidence that the contributors were within the restricted class, or in the case of the PACs of its members, that the contributions were unsolicited. AdvaMed PAC will refund or disgorge all the improperly solicited contributions with the first available funds it receives during 2009.

5. AdvaMed PAC will disclose all refunds, disgorgements, and repayments required under this conciliation agreement on the appropriate 2009 disclosure reports.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Except as provided in Section VI, paragraphs 3, 4, and 5 of this agreement, Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Thomasenia P. Duncan  
General Counsel


BY:



Ann Marie Terzaken  
Associate General Counsel  
for Enforcement

3/19/09  
Date

FOR THE RESPONDENTS:

  
(Name)  
(Position) General Counsel /  
Adva Med

February 18, 2009  
Date